

## Building on a strong tradition

As the newest addition to the Information Policy Analysis Division (IPAD), I want to take the opportunity to introduce myself. I have the good fortune to follow the amazing Don Gemberling as the Director of this division.

IPAD is filled with wonderful staff members who have always shared their advice freely with me and hardly ever laughed when I asked dumb questions. Nine years at the Minnesota Department of Public Safety have given me the perspective of a government agency customer of IPAD and been a great training ground for learning about data practices. I have seen first-hand how challenging and at times frustrating these issues can be for government agencies as well as for data subjects and the public.

As director, my goal is to help data practices make sense for all of us and when possible, simplify it. The Minnesota Government Data Practices Act's intent to let the sun shine on government is just as important today as it was 30 years ago. With the ever-expanding electronic world we live in, I would argue that the Act is even more crucial to ensuring government accountability and protecting each of us than when it was first enacted.

I am very excited to continue to expand my knowledge of data practices and in turn help all of you understand it better, too. With your support, my fresh perspective will continue to add to the strong tradition established in Minnesota through the commitment of so many of you.

*Laurie Beyer-Kropuenske, Director  
Information Policy Analysis Division*

## Join IPAD's Electronic Mailing List

Would you like to be notified when IPAD publishes its next electronic newsletter, when appellate courts issue decisions that relate to data practices or the Open Meeting Law, or when the Minnesota Legislature amends relevant statutes? If so, you may wish to sign up for IPAD's new email list service. To subscribe, go to [www.ipad.state.mn.us/listserv.html](http://www.ipad.state.mn.us/listserv.html) and enter

your email address. You also may unsubscribe at that same page on IPAD's website.

Please note that as a subscriber the only messages you receive will originate from IPAD; in other words, subscribers are not able to send messages to the mailing list. If you have any questions, please send an email to [owner-ipad-listserv@lists.state.mn.us](mailto:owner-ipad-listserv@lists.state.mn.us).

# Advice from the Swamp Fox\*

*\*Francis Marion, "the Swamp Fox," was a colonial officer from South Carolina in the Revolutionary War renowned for hiding in swamps while carrying out guerilla warfare against the British.*

## Dear Swamp Fox:

I am the responsible authority for the Frozen Loon School District. Our school board is thinking about putting a bond referendum before voters. A group of citizens has formed an anti-referendum committee. Members of the committee have made a request for copies of all kinds of financial data. After evaluating the request, I believe that the District will need to copy about 10,000 pages of data. We've had requests for copies of school board minutes in the past and have not charged for those copies. Can we charge for the 10,000 pages? We really can't afford to give these copies away.

Thanks for your help.

**Signed: A cost-conscious responsible authority**

## Dear Cost-conscious:

Deciding when and how to charge for copies of government data is one of the trickier areas of Chapter 13, the Minnesota Government Data Practices Act. The copy situation you have described is covered by section 13.03, subdivision 3 because a member of the public is requesting copies of public data of which she is not the subject. One thing to consider is that section 13.03, subdivision 3 says the District *may* charge for providing copies, but it is not required to do so. From your letter, it appears you may have determined that, in some instances, the cost of creating an invoice and doing the related accounting is more than the cost of providing the copies. Such a comparison certainly should be considered in establishing fees for providing copies of government data.

Assuming that you decide to charge for the 10,000 copies, the next question is how much can you charge. Section 13.03, subdivision 3(c) permits you to charge "...the actual costs of searching for and retrieving government data, including the cost of

employee time, and for making, certifying, compiling and electronically transmitting the copies of the data...." You cannot, however, charge for separating public and not public data.

To further assist the District, there is language in Minnesota Rules, section 1205.0300, subpart 4 that defines a "reasonable" fee for copies of public data. The costs that can be included are: the cost of materials, including paper; the cost of the labor required to prepare the copies and any special costs necessary to produce the copies from a machine-based record-keeping system. Some of these costs are straightforward; others have caused other government entities lots of problems.

For example, how do you know what labor rate to charge? The Commissioner of Administration has issued numerous advisory opinions on copy fees, many of which discuss the permissible fees for labor. You can find these in the *Opinion Index* available on the Information Policy Analysis Division (IPAD) website, [www.ipad.state.mn.us](http://www.ipad.state.mn.us). (See, *From the IPAD Toolbox*, on page 3 for further information about the *Opinion Index*.) The *Opinion Index* also can be used to find opinions that discuss other issues relating to copy costs. The document entitled *Fees for Providing Copies of Government Data* is also a good resource. You can find it on the IPAD website under *Other Publications*.

Finally, we strongly recommend that you document how you arrived at the cost for copies. This documentation serves two purposes. First, it satisfies the requirement of the Official Records Act, Minnesota Statutes, section 15.17, that you maintain those "...records necessary for a full and accurate knowledge of ...official activities." Second, it is a good business practice to set copy fees in advance and then use the documentation to explain how you arrived at your copy fees.

Good luck in determining the appropriate fee to charge for this copy request.

**The Swamp Fox**

## Opinion Update

*The following are highlights of recent Commissioner of Administration advisory opinions. All Commissioner's opinions are on the IPAD website at [www.ipad.state.mn.us](http://www.ipad.state.mn.us).*

**04-049:** An individual asked whether the Red River Watershed Management Board was in compliance with Minnesota Statutes, Chapter 13, if it had not prepared the public access procedures required pursuant to section 13.03, subdivision 2(b). This provision has been in effect since January 1, 2001. The Commissioner opined

that because the Board had not adopted the procedures, it was not in compliance with Chapter 13.

**04-052:** Two individuals asked whether Hennepin County had violated Chapter 13 by not responding to their challenge to the accuracy and/or completeness of certain data. Pursuant to section 13.04, subdivision 4(a),

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# From the IPAD Toolbox\*\*

*\*\*In this edition of FYI, IPAD is inaugurating a new regular feature. **From the IPAD Toolbox** will highlight resources that citizens can use in exercising their rights and that government entities can use in improving their compliance with Chapter 13 and other information policy laws.*

## **Determining an appropriate fee for providing government data to a person who is not the data subject**

An issue that has received a great deal of attention recently is how much a government entity may charge for copies of public government data. The following resources are available to help answer that question.

The Commissioner of Administration has issued numerous opinions about how much a government entity may charge for providing copies of public government data. These opinions have identified and discussed certain factors that may be used to determine an appropriate fee. The document, *Fees for Providing Copies of Government Data*, summarizes these factors for quick reference and is available on the IPAD website at:

[www.ipad.state.mn.us/docs/copyfees\\_1303.doc](http://www.ipad.state.mn.us/docs/copyfees_1303.doc). The document simply lists the costs that may be included in a copying fee, and those that may not be included.

More specific information than that provided in the

summary can be found in the document, *Topical Index to Advisory Opinions*, on the IPAD website at: [www.ipad.state.mn.us/docs/opindex.doc](http://www.ipad.state.mn.us/docs/opindex.doc).

This index identifies the topics discussed in advisory opinions that have been issued pursuant to Minnesota Statutes, section 13.072. In each of its subject categories, the index lists the opinions in which that particular subject is discussed.

Opinions that provide guidance on determining lawful copy fees are listed under the subject category, *Copy costs*. Within that category are a number of specific subcategories to help refine a search. For example, the *Copy costs* subcategory, *To public*, lists opinions that discuss some aspect of charging an appropriate copy fee to a member of the public (as opposed to providing copies of data to the subject of the data). Issues relating to the salary upon which a portion of the copy fee may be based are discussed in opinions listed under, *Copy costs – Labor*. Other aspects of determining copy fees can be found, for example, in opinions listed under the following *Copy costs* subcategories: *Average*, *Copies made by requestor*, *Flat or standard fee*, *Minimum charge*, *Operating expenses included*, and *Prepayment required*.

For further information about the *Index to Advisory Opinions*, see the April 2004 edition of *FYI*.

## *Opinion Update*

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the County was required to respond to the data challenge within 30 days. The County did not respond. The Commissioner opined that the County violated the individuals' rights because it did not make the required determination about their data challenge.

**04-055:** An individual asked whether Todd County had complied with Chapter 13 in charging \$16 for copying and faxing 11 pages of minutes from three County Board meetings. The Commissioner analyzed the County's \$16 fee in relation to the "actual cost" language in section 13.03, subdivision 3(c), and determined that the charge was not appropriate.

**04-058:** An individual asked whether the City of Warren complied with Chapter 13 in responding to the individual's request to inspect data. The City wanted to assess a fee for the inspection. Pursuant to section 13.03, subdivision 3(a), inspection is free. The Commissioner opined that the City was not in compliance with Chapter 13.

**04-059:** An individual asked whether the Eagan Charter Commission is subject to Chapter 13. Based on

language in section 13.02, subdivisions 7 and 11, the Commissioner opined that the Charter Commission is subject to Chapter 13. The Commissioner also addressed three other issues raised by the opinion requestor. As to two of the issues, the Commissioner was unable to make a determination. As to the third issue, the Commissioner stated that the Charter Commission is not in compliance with Chapter 13 if it has not prepared the public access procedures required pursuant to section 13.03, subdivision 2(b).



# Court Case Update

The Minnesota Supreme Court has issued two opinions on data practices and Open Meeting Law issues since the last edition of *FYI*. Each will be summarized briefly.

In *Star Tribune Company v. University of Minnesota Board of Regents*, 683 N.W.2d 274 (Minn. 2004), the Minnesota Supreme Court determined that the Minnesota Government Data Practices Act (Minnesota Statutes Chapter 13 (MGDPA)), and the Open Meeting Law (Minnesota Statutes Chapter 13D (OML)), apply to the Board of Regents of the University in its process of selecting a new University President, and that their application does not violate the autonomy granted to the Regents by the Minnesota Constitution. Both the district court and the Court of Appeals found that the two laws applied to the presidential search process.

The lawsuit stems from the fact that the Regents interviewed candidates for the position of President in private and refused to release the names of the finalists under the MGDPA.

In reviewing whether the MGDPA applied to the search process, the Court held that section 13.02, subdivision 17 expressly includes the University in the definition of "state agency" and no further specificity is required to make the MGDPA applicable to the presidential search process. In determining that the OML applied to the University, the Court found that "public body" is the "...broadest expression for the category of governmental entities that perform functions for the public benefit." *Star Tribune* at 280.

The Court then addressed the University's argument that the constitutional protections afforded to the Regents were

infringed by the application of the two laws. The Court did a detailed analysis of each of the University's arguments on this issue. The Court concluded that the constitutional protections insulating the Regents from legislative control and providing the Regents with the ability to "manage" the University were not violated by the application of the MGDPA and the OML to the presidential search process.

*Westrom v. Minn. Dept. of Labor & Industry*, (C9-03-128; C0-03-129 issued September 2, 2004) discusses the civil investigative data section, 13.39. The Department of Labor and Industry (DOLI) conducted an internal investigation to determine whether the Westroms had maintained the compulsory workers' compensation insurance at companies under the Westroms' control. DOLI determined that insurance had not been maintained and several procedural steps followed. The Westroms' lawsuit claims that DOLI released data about DOLI's determination to the media while the data were classified as not public.

The district court granted summary judgment to DOLI. The Westroms appealed and the Court of Appeals found that section 13.39 classified the data as not public. The Supreme Court affirmed the Court of Appeals and remanded the case for further action by the district court.

The Supreme Court's opinion addresses four issues. The first is whether the data in DOLI's orders and the objections filed by the Westroms are classified by section 13.39. The Court found that the data in the orders were based on data DOLI had collected and, because the objections from the Westroms were not voluntary, they were part of the data collection process. Additionally, the Court found that the investigation was active when DOLI released the data and that the data had been collected in anticipation of a pending civil action.

(Note: The Court did not discuss the requirement in section 13.39, subdivision 1, that the chief attorney for the government entity determines that a civil legal action is pending.)

The second issue was about the conflict between the civil investigative data provision (13.39) and the definitions of confidential data and protected nonpublic data found in section 13.02. The Court found that, according to the rules of statutory construction, the more specific provision, section 13.39, controlled. The third issue was whether the orders and objections were on file as part of an expedited hearing process and thus were public. The Court found that there was a genuine issue of fact and concluded that the summary judgment was not appropriate. The fourth and final issue was whether parts of the Workers' Compensation Act overrode the language in section 13.39. The Court found that the language in section 13.39 was more specific than the language in the Workers' Compensation Act and so controlled how the data were classified.



**Information Policy  
Analysis Division**

## Questions or comments?

Contact the Information Policy Analysis Division at 201 Administration Building, 50 Sherburne Avenue, St. Paul, MN, 55155; phone 800.657.3721 or 651.296.6733; fax 651.205.4219; email [info.ipad@state.mn.us](mailto:info.ipad@state.mn.us).

Staff: Laurie Beyer-Kropuenske, *Director*, Katie Engler, Janet Hey, Brooke Manley, Linda Miller and Catherine Scott.

This document can be made available in alternative formats, such as large print, Braille or audiotape by calling 651.296.6733.

For TTY communication, contact the Minnesota Relay Service at 800.627.3529 and ask them to place a call to 651.296.6733.

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